United States Department of Labor Employees' Compensation Appeals Board

F.G., Appellant	
and) Docket No. 21-0422
U.S. POSTAL SERVICE, POST OFFICE, Brooklyn, NY, Employer) Issued: March 16, 2022)
Appearances: Appellant, pro se Office of Solicitor, for the Director	Case Submitted on the Record

ORDER GRANTING REMAND

Before:

ALEC J. KOROMILAS, Chief Judge PATRICIA H. FITZGERALD, Alternate Judge VALERIE D. EVANS-HARRELL, Alternate Judge

On January 28, 2021 appellant filed a timely appeal from a December 16, 2020 merit decision of the Office of Workers' Compensation Programs (OWCP). By that decision, OWCP denied his traumatic injury claim (Form CA-1) that he sustained COVID-19 on March 10, 2020 causally related to the accepted employment exposure. The Clerk of the Appellate Boards assigned Docket No. 21-0422 to appellant's appeal.

On August 30, 2021, the Director of OWCP filed a motion to remand with the Clerk of the Appellate Boards. The Director noted that OWCP has conceded that appellant is a covered

¹ The Board notes that, following the December 16, 2020 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id*.

² The Board notes that OWCP subsequently issued a March 22, 2021 decision, which vacated the December 16, 2020 merit decision. However, appellant had a lready filed the current appeal to the Board on January 28, 2021. OWCP may not simultaneously have jurisdiction over the same issue. Consequently, the March 22, 2021 decision is set a side as null and void. *See* 20 C.F.R. § 10.626; *see also A.C.*, Docket No. 18-1730 (issued July 23, 2019); *M.C.*, Docket No. 18-1278, n.1 (issued March 7, 2019); *Russell E. Lerman*, 43 ECAB 770 (1992); *Douglas E. Billings*, 41 ECAB 880 (1990).

employee under the American Rescue Plan Act of 2021 (ARPA) and that he is entitled to appropriate benefits under FECA. The Director requested that the December 16, 2020 decision be set aside. The Director further advised that, upon remand, OWCP would reissue its decision on appellant's entitlement to FECA benefits for exposure to COVID-19 while in the performance of her federal duties, and authorize the payment of appropriate benefits as claimed.

The Clerk of the Appellate Boards served appellant with a copy of the Director's motion to remand. No reply was received.

The Board, having duly considered this matter, grants the Director's motion. On remand OWCP shall reissue its decision on appellant's entitlement to FECA benefits for exposure to COVID-19 while in the performance of his federal duties, and authorize the payment of appropriate FECA benefits as claimed by appellant.

IT IS HEREBY ORDERED THAT the motion to remand is granted. The decision of OWCP dated December 16, 2020 is set aside and the case is remanded for further proceedings consistent with this order of the Board.

Issued: March 16, 2022 Washington, DC

> Alec J. Koromilas, Chief Judge Employees' Compensation Appeals Board

> Patricia H. Fitzgerald, Alternate Judge Employees' Compensation Appeals Board

> Valerie D. Evans-Harrell, Alternate Judge Employees' Compensation Appeals Board